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12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
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15 SONY CORPORATION,

16 Plaintiff,

17 v.

18 VIZIO, INC.,

19 Defendant.  
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CASE NO. CV 08-01135-RGK (FMOx)

**DISCOVERY MATTER**

**SONY'S SUPPLEMENTAL  
MEMORANDUM REGARDING  
VIZIO, INC.'S MOTION TO  
COMPEL FURTHER RESPONSES  
TO VIZIO'S INTERROGATORY  
NOS. 2, 15 AND 16**

**Magistrate Judge: Hon. Fernando M.  
Olguin**

**Hearing:** 10:00 A.M. on August 12, 2009 at 312  
N. Spring St., 9th Floor, Courtroom F

**Discovery Cut-Off Date:** November 1, 2009

**Pretrial Conference Date:** January 10, 2010

**Trial Date:** January 26, 2010

1 Vizio’s “Supplemental Memorandum,” filed earlier this evening, raises no  
2 new points that it did not or could not have raised in the original joint stipulation.  
3 The only exception is a single, out of context citation to a statement made by Sony  
4 in a co-pending case in the Southern District of California—a district that, unlike  
5 this one, has adopted Patent Local Rules requiring the parties to exchange formal  
6 claim construction disclosures early in the case. Although Local Rule 37-2.3 allows  
7 the parties to file a supplemental brief following a joint stipulation, the purpose of  
8 that rule presumably is to permit the parties to bring new information to the Court’s  
9 attention; it is not a license for parties to restate the very same arguments and facts  
10 that were previously set forth (or ought to have been set forth) in the joint stipulation.  
11 Accordingly, with the exception of Vizio’s comments concerning the statements  
12 made in the parties’ co-pending case in San Diego, which Sony responds to below,  
13 Sony urges the Court to disregard Vizio’s Supplemental Memorandum and  
14 supporting materials. To the extent the Court chooses to consider Vizio’s  
15 supplemental brief, Sony has provided below a concise response to the specific  
16 points raised by Vizio in that filing and respectfully requests that the Court consider  
17 this response.

18 Vizio contends Sony improperly characterizes Vizio’s motion as requiring  
19 formal claim construction exchanges for all terms appearing in more than 100  
20 claims when in fact, Vizio only allegedly seeks such information for merely 40  
21 means-plus-function terms as well as a list of other disputed terms. But Vizio  
22 misses the point. Given the state of Vizio’s perfunctory non-infringement  
23 contentions and the parties’ ongoing discussions concerning identification of  
24 representative accused products and limiting the asserted claims for trial, it does not  
25 make sense for the parties to exchange formal claim construction disclosures  
26 (proposed constructions and all supporting evidence) when many of those claims  
27 may ultimately not be in issue at trial. Indeed, Vizio neglects to mention that the  
28 parties met and conferred on these very issues a mere five hours before Vizio filed

1 its Supplemental Memorandum and that the main stumbling block to reaching  
2 agreement is the woeful state of Vizio's production of technical information  
3 concerning its products.<sup>1</sup>

4 Sony believes that the parties should continue engaging in fact discovery,  
5 begin taking depositions (which have not yet begun), and continue working to  
6 reduce the number of asserted claims and to select representative accused products.  
7 In accordance with the protocol adopted by Judge Klausner at the April 6, 2009  
8 Scheduling Conference, once discovery has ended and the parties' disputes are  
9 crystallized, the parties can then brief any claim construction terms that are truly in  
10 dispute as part of their summary judgment briefs. To require the parties to invest the  
11 time and effort to prepare and exchange formal claim construction contentions at  
12 this point, for terms that may not even be at issue as trial nears, would unnecessarily  
13 waste time and resources.

14 Vizio's brief also misstates Sony's statements regarding expert discovery.  
15 Sony does not contend that Vizio's Interrogatory No. 2 seeks Sony's expert  
16 contentions. Rather, the information that Interrogatory No. 2 seeks is premature in  
17 the same way that a contention interrogatory seeking expert opinions would be  
18 premature if it required an answer before a Court-ordered date for the exchange of  
19 expert reports.

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22 <sup>1</sup> Vizio fails to point out that Sony has now produced to Vizio over 1000  
23 pages of infringement charts (supplemented once and soon to be supplemented  
24 again) in which any claim construction analysis that Sony has done is necessarily  
25 implicit. Although Sony has not prepared formal lists of proposed constructions for  
26 each term with charts cataloguing the intrinsic and extrinsic evidence that support  
27 those constructions, Sony's infringement contentions reflect the way in which Sony  
28 is asserting the asserted claims against Vizio. Because Vizio's non-infringement  
contentions do not currently provide the same kind of information, instead merely  
parroting the language of the asserted claims that is allegedly not met, the true  
disputes for trial and summary judgment motions have not yet crystallized.

1 Vizio also faults Sony for not addressing the “abundance” of case law cited  
2 by Vizio in the parties’ Joint Stipulation. Vizio’s criticism is misplaced. Sony did  
3 not address the case law cited by Vizio because it was off point, arising in  
4 jurisdictions that handle claim construction differently than this Court. The single  
5 cited case from the Central District of California, *Cable & Computer Tech., Inc. v.*  
6 *Lockheed Saunders, Inc.*, 175 F.R.D. 646 (C.D. Cal. 1997), has nothing to do with  
7 claim construction, or even patents, and merely discusses contention interrogatories  
8 in the abstract, the propriety of which is not in issue here.

9 Vizio’s lengthy citations to Sony’s motion to compel, which was never filed  
10 because Sony believed it had persuaded Vizio to disclose its noninfringement  
11 contentions are improper because Vizio could have relied on these materials in the  
12 parties’ Joint Stipulation but chose not to do so. For Vizio to raise these materials  
13 for the first time at 6:39 p.m. on the deadline for submitting a Supplemental  
14 Memorandum is improper gamesmanship. In any event, these materials are  
15 irrelevant because the unfiled motion centered on Vizio’s refusal to provide non-  
16 infringement contentions unless Sony provided claim construction contentions.  
17 Sony’s statements were made with respect to infringement/non-infringement  
18 contentions. Sony has always contended that claim construction contentions are  
19 different, for the reason that the Court said they were different at the April 6, 2009  
20 Scheduling Conference.

21 Vizio also repeats its argument that claim construction should be done early  
22 in discovery rather than later. But as Vizio knows, Judge Klausner expressly  
23 rejected that argument at the April 6, 2009 Scheduling Conference: “Each court  
24 does claim construction differently, as you know.” (April 6, 2009 Tr. at 9:20-25.)  
25 Although some courts do claim construction before or during fact discovery, others  
26 like this one, handle such issues in the context of summary judgment. Accordingly,  
27 Sony’s statements in the parties’ Joint Rule 26(f) Report in the Southern District of  
28 California action, suggesting sufficient time be allocated after the Court issues its

claim construction ruling for additional discovery, is in no way relevant here. Unlike this Court, the Southern District recently adopted Local Patent Rules that require formal claim construction disclosures followed by a Markman hearing early in the case schedule. This Court has not adopted such a protocol. For that reason alone, Vizio's Motion with respect to Interrogatory No. 2 should be denied.

Vizio also repeats its argument with respect to Interrogatory Nos. 15 and 16. Sony will not burden the Court with a recitation of the Sony counterarguments in the Joint Stipulation, except to note that Vizio's statements with respect to Rule 33(d) are particularly egregious. These interrogatories explicitly require Sony to describe "all facts" and "all documents." For Vizio to again assert that Rule 33(d) is an improper method of responding to these interrogatories is nonsensical. Rule 33(d) was incorporated into the Federal Rules for interrogatories precisely such as these.

For these reasons, as well as those set forth in the parties' Joint Stipulation, Sony respectfully requests the Court reject Vizio's Motion in its entirety.

DATED: July 29, 2009

Respectfully submitted,

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By /s/  
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